

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
DOMINIQUE ALVIERI, *et al.*,

Petitioners,

**ORDER**

- against -

04 CV 5031 (SLT)

MICHAEL A. ZENK, *et al.*,

Respondents.

-----X

**TOWNES, United States District Judge:**

By letter filed November 18, 2004, petitioner, Dominique Alvieri, requests *pro bono* counsel pursuant to 28 U.S.C. § 1915(e). For the reasons discussed below, petitioner's request is DENIED.

There is no right to counsel in a civil case. *Martin-Trigona v. Lavien*, 737 F.2d 1254, 1260 (2d Cir. 1984). Appointment of counsel, therefore, is really a misnomer in a civil case. The Court cannot compel any attorney to accept a civil case on a *pro bono* basis. *Mallard v. United States District Court*, 490 U.S. 296 (1989). However, pursuant to 28 U.S.C. § 1915(e)(1) (2003); "the court may request an attorney to represent any person unable to afford counsel."

In making this type of request, however, the Court must first consider whether the plaintiff's position is "likely to be of substance." *Ferelli v. River Manor Health Care Center*, 323 F.3d 196, 204 (2d Cir. 2003). If the claim asserted meets this threshold requirement, the Court should then consider

secondary criteria, “including [plaintiff’s] ability to obtain representation independently, and his ability to handle the case without assistance in light of the required factual investigation, the complexity of the legal issues, and the need for expertly conducted cross-examination to test veracity.” *Cooper v. Sargent*, 877 F.2d 170, 172 (2d Cir. 1989).

The instant petition does not establish the threshold requirement that his claim is “likely to be of substance” for *pro bono* counsel.

#### CONCLUSION

Therefore, plaintiff’s request for *pro bono* counsel under 28 U.S.C. § 1915(e) is DENIED.

SO ORDERED.

Dated: Brooklyn, New York  
December 7, 2005

S/  
SANDRA L. TOWNES  
United States District Judge